

IN THE COURT OF APPEALS OF IOWA

No. 0-047 / 09-1581
Filed February 10, 2010

**IN THE INTEREST OF N.G.,
Minor Child,**

**S.S.G., Mother,
Appellant.**

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Steven Drahozal of Drahozal & Schilling, P.C., Dubuque, for appellant mother.

Matthew Noel of Blair & Fitzsimmons, P.C., Dubuque, for appellee father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Mary Beth Fleming, Dubuque, for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

MANSFIELD, J.

Stacy, the mother of N.G. (born April 2007), appeals from the juvenile court order terminating her parental rights pursuant to Iowa Code section 232.116(1)(h) (2009).¹ Stacy contends the juvenile court erred in denying her request for a continuance of the termination hearing, and that termination was not in N.G.'s best interests. We affirm.

I. Background Facts and Proceedings.

N.G. and his three-year-old half-sister, L.J.,² first came to the attention of the Iowa Department of Human Services (DHS) in December 2008. DHS had received reports that Stacy and Mike, her husband, were harboring a teenage runaway, were using marijuana, and were keeping their residence in an unclean and unsafe condition. After the status of the home was confirmed, the family was given a week to clean the home. When DHS returned, there was no progress, so the children were placed into relative care for twenty-four hours. The next day, still no progress had been made. Therefore, Stacy and Mike agreed to a voluntary foster care placement.

Over the next month, the condition of the home slowly improved, and the children were allowed to return to Stacy and Mike's care. However, the home was not maintained, and the condition soon deteriorated.

At approximately 1:00 p.m. on February 26, 2009, two DHS caseworkers stopped by the residence for an unannounced visit. When the workers arrived, they found the back patio completely covered in dog feces. After being let into

¹ The father's (Mike's) parental rights were also terminated, but are not issue in the present appeal. The father and the mother had separated by the time of the hearing.

² Stacy is the mother of both N.G. and L.J.

the home by an individual at the residence, the workers noticed feces, cigarette butts, and dirty dishes throughout the house and a broken refrigerator with spoiled and rotting food. The workers also saw the two family dogs in their kennel covered in their own urine and feces.³ When the workers made their way to the children's rooms, they found the children gated into their respective rooms. Both children were only dressed in diapers, had severe diarrhea, had feces leaking from their diapers to the floor, had food sitting on the floor, and had dried feces on their legs. Stacy and Mike were found asleep in their bedroom. As a result of the condition of the home, a temporary removal order was obtained.

The worker who removed them described the situation as follows:

A. I am the worker that removed them from the home. I put them in the car and when we asked [Stacy] the last time they had eaten, she didn't recall. The 15-year-old gentleman that was supposed to be caring for them couldn't recall the time he gave them food. I took them to Burger King, ordered off the dollar menu. Three [orders of] chicken nuggets and some juice boxes. So between the two of them they ate twelve total nuggets. Twelve total nuggets and a large fry. And this is before we took them to the doctor. After the doctor's office, we still did not have a placement for them. We took them back to the Department, the office at DHS, and they proceeded to eat Nutrigrain bars, pudding, Sun Chips. They were very hungry.

Q. And thirsty? A. Yes. They drank quite a bit of juice.

At the doctor's office, both children were found to be extremely dehydrated, and both were diagnosed with giardia, an intestinal parasite spread by the ingestion of contaminated animal feces. At this time, both children were placed into foster care. On April 9, 2009, the children were transitioned to a foster/preadoptive placement, where they have remained.

³ One of the dogs had diarrhea, and as a result of his poor health, had to be euthanized.

On April 30, 2009, both children were adjudicated as children in need of assistance under Iowa Code sections 232.2(6)(c)(2) and (g). At this time, DHS began providing services to the parents including parenting skills counseling, parent-child interaction therapy, random drug testing, and mental health counseling.

During visitations, there were initially concerns that Stacy was “chair parenting” and not engaging with her children. However, Stacy has shown progress, and her later interactions with N.G. have been appropriate.⁴

Nonetheless, as of the hearing, numerous concerns remained as to Stacy’s ability to care for N.G. Throughout this case, Stacy has been unable to consistently care for herself. She came to supervised parenting sessions unkempt, without showering, in dirty clothes, and with a noticeable odor. Stacy has been unemployed since 2005. She testified at the hearing that she has been working for two years to get SSI disability benefits and expects them to be approved shortly, but does not have them yet. Prior to the hearing, Stacy had no regular housing and had been moving around from place to place (including a campsite and a homeless shelter). At the time of the hearing, she was staying at a friend’s house, although the friend was in the process of moving out of that house.

Stacy has also struggled with substance abuse. Stacy underwent drug testing on June 5, 2009, July 10, 2009, and September 11, 2009. On each occasion she tested positive for marijuana. Despite these tests, Stacy testified at

⁴ Stacy has missed nine of these visits.

the termination hearing that she has not used marijuana since around New Year's Day 2009.

Stacy also has long history of mental health concerns. Stacy has been diagnosed with bipolar disorder, generalized anxiety disorder, avoidant personality disorder, and depressive personality disorder. Although Stacy is prescribed several medications, she has not been consistent in taking them. At the termination hearing, Stacy testified that she had not taken her bipolar medication since March 2009. Stacy's psychiatrist refused to see her because she had missed so many appointments.

The State filed petitions seeking the termination of Michael's and Stacy's parental rights to N.G. and L.J. on August 10, 2009. A hearing was initially scheduled for September 2, 2009. However, due to Stacy's and Mike's separation, new counsel for each parent had to be appointed. The termination hearing for N.G. was rescheduled for September 24, 2009.⁵

On September 17, 2009, Stacy moved for a continuance so additional time could be granted to work toward reunification. The motion was heard with the termination hearing. On October 6, 2009, the juvenile court filed a written ruling terminating Stacy and Mike's parental rights. Stacy appeals.

⁵ The State also petitioned for termination of parental rights as to L.J., N.G.'s half-sister. However, because L.J. had turned four before September 24, the hearing on September 24 only concerned N.G.'s parental rights. L.J. has a permanency hearing scheduled for March 2010.

II. Standards of Review.

We review the district court's ruling on a motion for continuance for an abuse of discretion. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). We will only reverse if injustice will result to the party desiring the continuance and the denial was unreasonable under the circumstances. *Id.*

We review the termination de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court's factual findings, but are not bound by them. *Id.* Our paramount concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Analysis.

In her well-briefed appeal, Stacy makes two related arguments. She contends the juvenile court should have granted a continuance of N.G.'s case until March 2010, when L.J.'s case would be heard. She also contends termination was not in N.G.'s best interests. Stacy does not dispute that the statutory requirements set forth in Iowa Code section 232.116(1)(h) were otherwise met.

Stacy's motion for continuance in the district court argued that she should have been granted an extension to allow her additional time to work toward reunification. On appeal, Stacy now claims a continuance should be granted until after the permanency hearing of N.G.'s half-sister L.J. scheduled in March 2010, because not doing so could result in the possible legal separation of N.G. and L.J. "There is no indication in the record this issue was raised in the juvenile court. As a general rule, an issue not presented in the juvenile court may not be

raised for the first time on appeal.” *In re T.L.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994).

Even if the issue were preserved, we find the juvenile court did not abuse its discretion in denying the motion for a continuance, because it is still in N.G.’s best interests that Stacy’s parental rights be terminated at the present time, although this may result in the temporary or permanent separation of the children. See *id.* (stating that although siblings should be kept together whenever possible, the paramount consideration is the children’s best interests).

In determining a child’s best interests, “the court shall give primary consideration to the child’s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.” *In re P.L.*, ___ N.W.2d ___, ___ (Iowa 2010) (quoting Iowa Code § 232.116(2)). At the time of the termination hearing, Stacy continued to have significant concerns surrounding her mental health and substance abuse. She had not taken her mental health medications for almost six months, and had tested positive for marijuana on three occasions, while at the same time denying such use. Stacy also remains unemployed and continues to have unstable housing arrangements. In addition, we agree with the juvenile court that “[t]he level of neglect and harm inflicted upon the child by the parents prior to removal was significant.” It is unacceptable for the parents to be sleeping while their children are famished, dehydrated, have severe diarrhea and unchanged diapers, and are sick from giardia from exposure to the dog feces throughout the apartment. While Stacy has shown progress in her interactions with N.G., we agree with the juvenile court on the whole that there is a “poor

prognosis for change.” At the present time, N.G. is in a foster home, which is a pre-adoptive placement. N.G. is thriving in the environment, and is in need of a safe and permanent home. Therefore, we conclude it was in N.G.’s best interests to terminate the parental rights of Stacy at this time.

Accordingly, we affirm the order of the juvenile court.

AFFIRMED.